

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR , AM

आयकर अपील सं./ ITA No. 375/Chd/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Sh. Jagmohan Singh # 2409, Krishna Nagar Ludhiana	बनाम	The DCIT Central Circle-1 Ludhiana
स्थायी लेखा सं./PAN No: AEHPS2203N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by

: Shri. Tej Mohan Singh

राजस्व की ओर से/ Revenue by

: Dr. Gulshan Raj

आयकर अपील सं./ ITA No. 108/Chd/2012

निर्धारण वर्ष / Assessment Year : 2008-09

The DCIT Central Circle-1 Ludhiana	बनाम	Sh. Jagmohan Singh 2409, Krishna Nagar Ludhiana
स्थायी लेखा सं./PAN No: AEHPS2203N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by

: Shri. Hari Om Arora

राजस्व की ओर से/ Revenue by

: Dr. Gulshan Raj

सुनवाई की तारीख/Date of Hearing

: 27/08/2018

उदघोषणा की तारीख/Date of Pronouncement

: 29/10/2018

आदेश/Order

PER BENCH.:

The above appeal has been filed by the Assessee and Cross Appeal filed by the Revenue against the separate order of Ld. CIT(A), Ludhiana.

2. Firstly we shall deal with the appeal of the Revenue in ITA No. 108/Chd/2012 for A.Y. 2008-09, wherein Revenue has raised the following grounds:

1. The Ld. CIT (A) has erred both in law and on facts of the case in deleting the addition of Rs. 30,15,159/- ignoring the fact that the assessee failed to explain satisfactorily, the source of payment of said amount during the assessment proceedings.

2. The Ld. CIT (A) has erred both in law and on facts of the case in deleting the additions amounting to Rs. 31,000/- by holding that since the entries in the seized documents have been owned by the Ms. Sunita, no addition is called for by ignoring the fact that she failed to establish its genuineness even at the appellate stage.

3. The Ld. CIT(A) has erred in law and on facts of the case by holding that the additions of Rs. 28,00,000/- pertains to the Asstt. Year 2007-08 and not to the Asstt. Year 2008-09, ignoring the fact that in absence of narration of the period on the seized documents, the A.O. was right in presuming and assessing the said assessment in the year of search operation i.e in AY. 2008-09.

4. The Ld. CIT(A) has erred in law and on facts of the case in deleting the additions of Rs. 10,00,000/- made on account of credit in capital account ignoring the fact that the assessee failed to explain the satisfactorily the source of accretion of said amount in the capital account during the assessment proceedings.

Ground No. 1

3. The complete portion of the assessment order relevant to this addition is as under:

“2.1 During search operation a document appearing at Page-28 as per Annexure A-II/10 was seized. As per this document, details of the amount of Rs. 30,15,158/- has been written in assessee's own hands. During assessment proceedings, the assessee was asked to explain its nature and the source of its payment. The assessee in his letter dated nil received on 14/12/2009 submitted as under:

Date	Cheque No.	Amount (in lacs)	Transferee
10/08/2007	230377	10.00	Surinder Kaur
11/08/2007	230830	4.70	Surinder Kaur
11/08/2007	230829	4.80	Rajinder Singh
13/08/2007	215179	4.90	Rajinder Singh
13/08/2007	215179	4.90	Surinder Kaur
	Total	29.30	

2.2 Though the assessee to some extent explained its content but failed to explain the source of such payment and to furnish supportive documentary evidence particularly when the cheque dated 13/08/2007 issued to two different persons bears the same cheque numbers. Moreover, the total amount as written on the documents seized does not tally with the amount of loan/advance as stated in his letter dated nil, referred to above as there is still difference of Rs. 85,158/- with the amount of loan or advance as stated by the assessee. Therefore the source of payment of Rs. 30,15,158/- remained unexplained and is added to the income returned.

4. Ld. CIT(A) deleted the addition on the grounds that this sum of Rs. 30,15,159/- has been explained as the total of all bank balances.

5. Before us, Ld. DR relied on the assessment order mentioned above.

6. Ld. AR submitted with the support of the copies of the bank statements that the closing balances of the various accounts is as under:

Standard Chartered Bank – Jagmohan Dhaliwal - Rs. 9,85,530/-

Standard Chartered Bank – Amarjeet Kaur and Jagmohan Dhaliwal – Rs. 9,50,000/-

Standard Chartered Bank – Jagmohan Dhaliwal – Rs. 11,03,170/-

He explained that these are the closing balances of the bank balances which were jotted down by the assessee which the Assessing Officer has erroneously taken as concealed income.

7. Having gone through the copies of the bank accounts, we are inclined to accept with the finding of the Ld. CIT(A) that these are the estimates of bank balances in the three bank accounts of the assessee and his wife.

8. The appeal of the Revenue on this ground is dismissed.

Ground No.2

9. The Assessing Officer made addition of Rs. 31,000/- based on the documents seized and marked as Sl. No. 31 of Annexure A-II/10. The complete portion of the assessment order relevant to this addition is as under:

2.3 During search operation, a document appearing at Page-31 as per Ann-A-II/10 was seized. As per this document, details of the expenses of the amount of Rs.31,000/- has been written. As the assessee failed to explain the nature and the source of such payment, the same is added to the income returned. Accordingly an addition of Rs.31,000/- is made to the income returned. Penalty proceedings u/s 271 AAA for furnishing inaccurate particulars of income in respect of such income resulting in concealment of income are being initiated.

10. The Ld. CIT(A) has deleted the addition after duly considering the remand report of the Assessing Officer wherein the Assessing Officer held that the person namely is Smt. Sunita confirmed that she had made those entries in the diary in her hand writing which pertain to the expenses of the marriage of her daughter in 2006. The Ld. CIT(A) held that since Smt. Sunita owned up the diary entries no addition is warranted.

11. We have gone through the facts on the record, and heard the arguments of both the parties. Once it has been confirmed that the diary belongs to Smt. Sunita, the writings and the contents are confirmed in the statement to the extent that they belong to her in person, no addition can be made in the hands of the assessee disregarding the facts on record.

12. This ground of appeal of the Revenue is dismissed.

Ground No. 3

13. The Assessing Officer made addition of Rs. 28,00,000/- based on the seized material at page no. 161 of Annexure A-I/11. The notings reflect an amount of Rs. 30,00,000/- received on 14/05/2005 and 26/05/2005.

14. The Ld. CIT(A) deleted the addition on the grounds that the amounts received do not pertain to the A.Y. in appeal.

15. We have gone through the facts on the record, and heard the arguments of both the parties. The relevant part of the extracted from the order of the CIT(A) is as under:

12. The AO was directed to specify the basis upon which an addition of Rs. 28 lac had been made even though the impugned paper contained number of entries. The AO submitted his remand report wherein the impugned paper was reproduced and the AO observed he said paper contained notings pertaining to the transaction of sale of property namely "Kothi Tehal Singh" by the co-owners including the wife of the assessee. The AO opined that the amount paid as 'biana' by the buyers of "Kothi Tehal Singh" to the tune of Rs. 60 lacs had been received by the power of attorney holders and immediately passed on to the real owner of the property, which meant that the expenses incurred as detailed in the seized document were from undisclosed sources of the assessee himself. The AO based his conclusion on the ground that the seized document contained two types of expenditures. One expenditure of Rs. 28 lac was on account of Mohinder and Gurdeep, i.e. two NRI brothers who had given their power of attorney to Dr. Ravinder Singh and the source of payment according to the AO remained unexplained.

16. The Ld. AR has relied on the arguments taken in response to the remand report which are as under:

"It has also been submitted that the papers relied on by the Ld. Assessing Officer for making addition of Rs. 28 lacs do not relate to A.Y. 2008-09, as the amount of Rs.30 lacs was admittedly received on 14.05.2005 and 26.05.2005. The fact of receipt of money amounting to Rs. 30 lacs in A.Y. 2006-07 is not disputed and the amount received by Sh. Jagmohan Singh stands credited (Rs.15 lacs Ms. Amarjit Kaur and Rs.15 lacs Ms. Surinder Kaur) in the accounts and the same is refundable to the persons from whom the amount was received. The / liability for Rs.30 lacs has been admitted by the Appellant even in the Civil litigation filed for specific performance by the parties. From the details of narrations in the paper, it cannot be assumed that other narrations regarding expenses (expenditure and common expenditure) can be related to any outgoing for the A.Y. 2008-09, when the actual amount received falls in A.Y. 2006-07 and other litigation expenses falls in the A.Y. 2007-08. The submissions made by the Ld. Assessing Officer in reply dated 12.07.2011 on the issues in paragraph 8.2 are clear, as the date mentioned therein regarding receipt have been mentioned as 14.05.2005 and 26.05.2005 and date of filing of Civil it has also been mentioned as 11.06.2006. The paper was seized on 04.10.2007 but the narration clearly point out that these do not relate to period under reference i.e. 2008-09.

17. On perusal of the remand report of the Assessing Officer, reply of the assessee, narration of the contents of the seized paper, interpretation of the Ld. CIT(A) on that seized paper it can be said that since the amount received

pertain to the period of F.Y. 2005-06 the addition cannot be made for the F.Y. 2007-08 relevant to the A.Y. 2008-09. Hence we decline to interfere with the order of the Ld. CIT(A).

18. This ground of appeal of the Revenue is dismissed.

Ground No. 4

19. The complete portion of the assessment order relevant to this addition is as under:

2.5. The assessee, during assessment proceedings, furnished an income & expenditure statement, balance sheet of M/s Amarjit Nursing Home, as on 31.03.08. On examination of the proprietor capital a/c, it has been noticed that an amount of Rs. 10,00,000/- has been credited to the capital a/c, the source of which was not ascertainable. The assessee was, accordingly, asked to explain the source of credit of Rs. 10,00,000/- to the capital account. However, he failed to explained the source of such deposit in the proprietor's capital a/c. Accordingly an addition of Rs. 10,00,000/- is made to the income returned.

20. The Ld. CIT(A) deleted the addition on the grounds that the assessee could satisfactorily explain the credits.

21. Before us, Ld. DR argued that the assessee could not furnish any explanation before the Assessing Officer and relied on the assessment order.

22. The Ld. AR argued that the amount has been paid to Smt. Surinder Kaur vide Cheque NO. 230377 dt. 22/08/2007 and may be treated as explained.

The record shows that :

a. There is an addition of Rs. 10,00,000/- in the capital account of the Amarjeet Nursing Home, Ludhiana as at 31/03/2008.

b. An amount of Rs. 10,00,000/- has been withdrawn from the account of the assessee to Smt. Surinder Kaur on 10/08/2018.

c. Dr. Amarjeet Kaur was the proprietor of the Amarjeet Nursing Home till January 2007.

23. Since the facts are not completely examined by the Assessing Officer as to what the relationship between Smr. Surinder Kaur, Amarjeet Kaur and Jagmohan Singh and the flow of funds to the capital account have not been examined in proper perspective, we hereby remand the matter back to the file of the Assessing Officer for the limited purpose of examination and allowing the addition to the capital account.

24. This ground of appeal is allowed for statistical purposes.

25. Now we shall deal with the appeal of the Assessee in ITA No. 375/CHD/2016 for the A.Y. 2009-10 wherein Assessee has raised the following grounds:

1. That the impugned order has been passed by the Ld. Commissioner of Income Tax (Appeals) without proper application of mind, as such it is not sustainable in law and facts of the case.

2. That under the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) is not justified in dismissing appellant's appeal and holding that the Penalty imposed U/S 271 (1) (c) of the IT. Act, 1961 by the Assessing Officer in this case is held to be justified. The Penalty levied amounting to Rs. 13,13,910/- confirmed by the Ld. Commissioner of Income Tax (Appeals) is misplaced, untenable and contrary to law.

3. That the Penalty levied is based on misplaced and untenable notice. Provisions of Section 271(1) (c) of the Income Tax Act, 1961 have been misconstrued and misapplied in the Appellant's case.

26. Since the quantum additions have been deleted / restored the same is hereby dismissed as in fructuous at this juncture.

27. As a result Appeal of the Revenue is allowed for statistical purposes and that of the Assessee is dismissed.

Order pronounced in the open Court.

Sd/-
दिवा सिंह
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member
AG
Date: 29/10/2018

Sd/-
डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File